IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5480 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KULMUKHATYAR OF HARIJAN GELA LSURESHCHANDRA DEVKARAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5480 of 1993

MS SEJAL K MANDAVIA for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 10/03/2003

ORAL JUDGEMENT

The petitioner, in this petition, has challenged the order dated 5th March, 1993 passed by the Revenue Department (Appeals), Gujarat Government, Ahmedabad,

confirming the order dated 20th October, 1992 passed by the Collector, District Junagadh.

2) The brief facts giving rise to the present petition are that the petition is relating to the land bearing Survey No.590, admeasuring about 4 Acres and 17 Gunthas. The said land was given by the respondents to one Mr.Harijan Gela Laxman by order dated 5-5-1967 and the conditional permission was granted for conversion into old condition, by order dated 6-3-1982. The petitioners have applied for converting the land from agricultural to non-agricultural use and the permission was granted by order dated 6-3-1982 on certain conditions. One of the conditions specifically states that the petitioner should pay (a) Rs.48,282/- as a premium amount or (b) 50% of the amount of sell of the plot, whichever is higher and on this condition the permission was granted to the petitioner. It is further stated that the petitioner has thereafter prayed for instalment of the amount of premium. However, the said prayer was rejected by the respondent No.2 by an order dated 13-2-1984. Being aggrieved by the said order of the District Collector, the petitioner preferred a Revision Application before the respondent No.1 and the said Revision Application was also rejected by respondent No.1 vide his order dated 28-12-1987. While rejecting the said application, the respondent No.2 has held that the petitioner has not paid the premium amount and therefore, the Collector's order granting permission of converting the land into non-agricultural land did not stand and the petitioner should, therefore, apply for the said permission again. It was further ordered by the Revisional authority in the said order that the petitioner is at liberty to apply to the Collector for the permission and the petitioner should give information about the statements of the plots etc.

3) Pursuant to the said order passed by the Revisional Authority, a notice was issued to the petitioner for providing such statements. The petitioner has submitted that the statements of plots sold and its price etc. were already furnished. Instead of giving further opportunity for providing the information, the respondent No.2 has decided that the petitioner should pay the premium amount determined at Rs.48,282.60 ps. and interest at the rate of 12% compound interest for the period from 1982-83 to 1992-93 amounting to Rs.1,19,670/-. Thus, in all a sum of Rs.1,67,952.60 ps. was demanded from the petitioner. Being aggrieved and dissatisfied by the order of the respondent No.2, the petitioner has preferred a revision before the respondent

No.1 and without giving any findings on the issue raised by the petitioner or without giving any reason, the respondent No.1 has confirmed the order of the respondent No.2, vide his order dated 5-3-1993. It is this order, which is under challenge in the present petition.

4) The petitioner submitted that the respondent-authority has no power to pass such type of punitive order, without hearing the party and hence, the said order is violative of principles of natural justice. The petitioner further submitted that the N.A.permission was granted on the condition to pay the amount and the petitioner was ready and willing to pay the said amount. However, since all the plots were not sold and without deciding the amount, which was to be paid by the petitioner straightway order was passed by the respondent authorities. The said order was, therefore, required to be quashed and set aside.

5) It was further submitted that there was no fault on the part of the petitioner as all the plots were not sold and the respondent authorities have not decided the amount, which was to be paid by the petitioner and therefore, the respondent authorities should not pass any order to pay the premium amount and punitive interest thereon.

6) I have gone through the order passed by the authorities and I have also considered the facts stated and averments made in the petition. It is an admitted position that twice the orders were passed by the Collector and also by the revisional authorities. After considering the facts and circumstances of the case, the authorities have decided the amount of premium with interest thereon. The petitioner has failed to pay the amount and hence the N.A. permission which was granted on certain conditions was required to be cancelled. Even in the second round of litigation, the revisional authorities have taken the view that the order passed by the Collector with regard to the payment of premium amount and interest thereon did not call for any interference. Even at the time of admission of this petition this Court has directed the petitioner to pay the amount of Rs.75,000/- on or before 1st November, 1993. The said direction is strictly not complied with by the petitioner as out of Rs.75,000/-, the sum of Rs.25,000/- was paid on 1-11-1993, another amount of Rs.25,000/- was paid on 1-2-1994 and the balance amount of Rs.25,000/- was paid on 1-5-1994. This Court has made it very clear that in case the petitioner fails to deposit the aforesaid amount within the stipulated

period, the order regarding ad-interim relief would not operate. In any view of the matter, since both the authorities have taken concurrent view, this Court while exercising its prerogative writ jurisdiction under Article 227 of the Constitution of India is not inclined to interfere in the orders passed by the authorities below. This Court has not found any infirmity in the said orders and the amount, which was demanded from the petitioner way back in 1982-83 and if the said amount is not paid in time by the petitioner, the respondent authorities are justified in charging interest on the said amount and, therefore, amount demanded by the respondent No.2 vide his order dated 28-10-1992 cannot be said to be unjust or unreasonable. The respondent No.1 has also rightly observed that after taking into consideration the entire facts, the Collector has taken the just and proper decision, which does not require any interference. This Court is, therefore, endorsing the view taken by the authorities below and dismiss this petition.

7) It is open for the petitioner to pay the balance amount to the respondents within a month from today failing which, respondent authorities are entitled to recover the said amount by way of recovery of land revenue. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

(K.A.Puj, J.)
/malek